



## **Additional Comments on the Draft Political Declaration on Strengthening the Protection of Civilians from Humanitarian Harm arising from the use of Explosive Weapons in Populated Areas<sup>1</sup>**

**PAX**  
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PAX with partners in over 15 conflict areas, sees the devastating impact of the use of explosive weapons in populated areas on a daily basis. As founding board member of the International Network on Explosive Weapons (INEW), PAX supports the comments laid out in the INEW paper [\*Draft Political Declaration on Strengthening the Protection of Civilians from Humanitarian Harm arising from the use of Explosive Weapons in Populated Areas\*](#).

Throughout the years, PAX has documented numerous aspects of the use of explosive weapons in populated areas in various publications.<sup>2</sup> It is in this light that we would like to make the following remarks on:

- 1 The direct relationship between the use of explosive weapons with wide area effects in populated and the risk to civilians, and the presumption of non-use,
- 2 The environmental impact from the use of explosive weapons in populated areas,
- 3 The importance of precise and ambitious data gathering and sharing commitments.

Each of the following sections starts with introductory remarks and ends with specific suggestions for consideration in the Draft Declaration.

### **1 The direct relationship between the use of explosive weapons with wide area effects in populated and the risk to civilians and the presumption of non-use.**

Evidence shows the use of explosive weapons with wide area effects in populated areas creates grave risks for civilians.<sup>3</sup> Explosive weapons refers to a broad category of weapons, and it is especially the explosive weapons that have a wide area effect that are problematic in populated areas. Due to their inaccuracy, the use of multiple munitions and/or a large blast and fragmentation radius, these wide area effects are likely to extend beyond or take place outside the intended target thereby putting civilians at risk. This is at the core of the matter and should be reflected in both the preambular section of the draft political declaration, for example in 1.5 as in the operational commitments under 3.3 in order to establish a presumption against the use of explosive weapons with wide area effects in populated areas.

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<sup>1</sup> The PAX submission is by no means meant to be read as exhaustive commentary, but as additional to the full INEW commentary [\*Draft Political Declaration on Strengthening the Protection of Civilians from Humanitarian Harm arising from the use of Explosive Weapons in Populated Areas\*](#).

<sup>2</sup> See, for example: [\*Operating under Fire - The Effects of Explosive Weapons on Health Care in the East of Ukraine\*](#) (May 2017), [\*Areas of harm - Understanding explosive weapons with wide area effects\*](#) (September 2016), [\*Shattered lives - Civilians suffer from the use of explosive weapons in Libya\*](#) (September 2015), [\*Collateral - The human cost of explosive violence in Ukraine\*](#) (September 2015), [\*Unacceptable Risk: Use of explosive weapons in populated areas through the lens of three cases before the ICTY\*](#) (October 2014) and [\*Protecting Civilians from Explosive Violence; Defining the Humanitarian Problem\*](#) (February 2011).

<sup>3</sup> See, for example: <http://www.inew.org/resources/>.

As elaborated in a joint publication by Article 36 and PAX, depending on population density figures thousands of civilians can be at direct risk from just one attack.<sup>4</sup> Besides the direct risk during the attack, explosive weapons with wide area effects create interrelated reverberating effects that extend in space and time, creating significant additional civilian casualties. The question is not *if* civilians are at risk when explosive weapons with wide area effects are used in towns and cities, the question is *how many and when*.

Suggested change #1: (Section 1)

In the draft political declaration this direct relationship between wide area effects of explosive weapons on the one hand and the risk to civilians on the other hand seems to be caveated. In 1.2: “explosive weapons with wide area effects can have a devastating on civilians and civilian objects”. This “can” language, risks signaling a disregard for the documented direct relation between wide area effects and risks to civilians. It should therefore be deleted.

Suggested change #2: (Section 1)

The above mentioned “can language” is also present in 1.5, where in the first sentence it mentions (...) can increase. Again, this “can” does not do justice to the documented direct relation between wide area effects and the risk to civilians and should therefore be deleted.

Suggested change #3: (3.3)

Since the presumption of non-use of explosive weapons with wide area effects in populated areas is central in better protecting civilians, article 3.3 should move up to be 3.1.

Suggested change #4: (3.3)

In the same line as suggested changes #1 and # 2, the last part of 3.3 (“*whose effects extend beyond the immediate area of a military objective*”) should be deleted as it could be read as if some explosive weapons with wide area effects would not extend beyond the immediate area of a military objective, creating an unnecessary caveat to the link between explosive weapons with wide area effects and risk to civilians.

Suggested change #5: (3.3)

In order to work towards a presumption of non-use, 3.3 should be adjusted to reflect the calls from the United Nations Secretary General, the ICRC, the two regional communiques (the Maputo declaration and Santiago Communique), and other states, and commit states “to **avoid** the use of explosive weapons with wide area effects in populated areas”.

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<sup>4</sup> Article 36 and PAX, “[Areas of Harm - Understanding Explosive Weapons with Wide Area Effects](#)”, (September 2016).

## **2 The environmental impact of explosive weapons in populated areas.**

Explosive weapons project blast and fragmentation around the point of detonation, causing buildings to collapse and debris to fly around. When explosive weapons hit buildings and structures, there is a direct release of particulate matter. This may include concrete, cement (and its impurities) and sometimes asbestos, which subsequently could lead to environmental contamination and a danger to human health, especially from long term or repeated exposure. Munition constituents such as energetic materials, heavy metals and propellants can also contribute to local pollution hotspots in urban areas after intense use.<sup>5</sup>

As industrial sites, water and sanitation systems are often located in, or near, populated areas there is increased risk of damage when explosive weapons with wide area effects are used in towns and cities. Industrial sites often contain chemicals and other toxic substances that when damaged may leak into the environment and create acute or long-term exposure risks.<sup>6</sup> PAX<sup>7</sup> and UN<sup>8</sup> research in conflict areas has shown, that when critical infrastructure such as power stations and transformers are damaged, and storage sites of hazardous chemicals and pollutants deliberately targeted, this resulted in direct deaths and a range of serious long term health risks.

Besides this direct environmental impact from EWIPA during the attack, there are medium to long term impacts to consider. For example, as a result of the direct damage to a water and sanitation facility, water and sanitation services may be disrupted for a longer period of time creating further environmental challenges and public health risks, in particular the spread of communicable diseases.

Whether the environmental impact of EWIPA is direct, or indirect, short term or long term, the concentration of civilians in populated areas will make it likely that large numbers of civilians will be affected. We therefore suggest including language on environmental impacts in the political declaration for states to consider environmental impact in their military planning, both before the attack as well as in data gathering and sharing after the attack.

### **Suggested change #6 (Section 1):**

Reference “environmental impact” in the preambular section as impact, either under 1.2 or in a separate article under Section 1.

### **Suggested change #7 (4.2):**

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<sup>5</sup> The Lancet, “[The effect of explosive remnants of war on global public health: a systematic mixed-studies review using narrative synthesis](#)” (2017).

<sup>6</sup> OSCE, “[Environment Assessment and Recovery Priorities for Eastern Ukraine](#)” (September 2017).

<sup>7</sup> PAX, “[Living under a black sky: Conflict Pollution and Environmental Health Concerns in Iraq](#)” (November 2017).

<sup>8</sup> UN Environment Programme “[Environmental Issues in areas retaken from ISIL](#)” Technical Note, (September 2017).

Include impact on environment on data collection and sharing, by adding (...), on the direct and indirect impact on civilians **and the environment** of our military operations (...)

### **3 The importance of precise and ambitious data gathering and sharing commitments.**

Data collection will not only facilitate better understanding of the effects of the use of explosive weapons in populated areas, it will be of key importance to prevent, mitigate and respond to civilian harm.

In order to serve these functions, data needs to be precise as to what was used where and in what quantities. Furthermore collection should provide for disaggregated data on the direct and indirect impacts of the attack, specifying gender, age and disability. The impact assessment by states should not be limited to “*just*” the impact on the military target. Instead, data collection should include casualty recording and civilian harm tracking mechanisms. This information will be important to serve the above-mentioned functions, will facilitate accountability, learning mechanisms and legal reviews. Collecting and sharing data publicly is in principle always appropriate and should be the standard. When it is impossible to do so, states can explain why they defer from the standard data collection and sharing practices. The “when appropriate” is very permissive of not collecting or sharing data, open for broad interpretation and should therefore be deleted.

#### *Suggested change #8 (1.6)*

Data should be disaggregated on civilian casualties by sex, age and disability, and on explosive weapons use including types, locations and effects, and sharing of data as well as transparency in reporting, which can inform understanding of the impacts and responses (not just mitigation strategies).

#### *Suggested change #8 (4.2)*

Delete “where appropriate” and replace urban areas with populated areas.